

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

T-MOBILE USA, INC., et al.,

Plaintiffs,

v.

THE CITY OF ANACORTES,

Defendant.

CASE NO. C07-1644RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on cross-motions for summary judgment (Dkt. ## 12, 27). The court has considered the parties' briefing and supporting evidence, and has heard from the parties at oral argument. The parties agreed at oral argument that no material facts are in dispute to prevent the court from ruling on their respective summary judgment motions. For the reasons stated below, the court GRANTS Plaintiffs' motion and DENIES Defendant's motion.

**II. BACKGROUND**

Plaintiffs T-Mobile USA, Inc., and T-Mobile West Corporation (referred to collectively as "T-Mobile") provide digital wireless voice, messaging and data services. T-Mobile's service operates through its cellular radio telephone network, which is comprised of thousands of cell antenna sites, switching facilities, and other network elements. The federal government assigns each wireless carrier a limited amount of frequency, which is divided into a certain number of radio frequency ("RF") channels, and the RF channels are assigned to the cell sites to enable wireless communication. The limited number of RF channels must be reused at different cell sites, creating potential

1 interference between sites. To minimize such interference, all sites transmit at very low  
2 power, resulting in limited coverage from each site. The location of antenna sites is  
3 determined by terrain, structure blockage, call volume, and antenna height.

4 T-Mobile sought to expand its coverage in the City of Anacortes (“the City”), on  
5 the northern portion of Fidalgo Island in Puget Sound, in September 2006. T-Mobile  
6 applied for a permit to construct an additional wireless telecommunications facility  
7 (“WCF”) at a particular site. The permit application analyzed eighteen site alternatives  
8 and proposed the construction of a 116-foot monopole with three antennas at the top.  
9 The facility would also include a new equipment building to house associated radio  
10 cabinets. T-Mobile proposed building the facility on property owned by the United  
11 Methodist Church, located in a residential neighborhood.

12 The Anacortes Municipal Code (“AMC”) regulates the permitting approval  
13 process and creates three paths to permit approval. The first path is for “permitted uses,”  
14 which includes wireless facilities that are to be located on public property. No review or  
15 approval is required for these uses. AMC 17.63.050. The second path is an  
16 administrative approval process that applies to a limited number of locations, which do  
17 not include any residential zones. AMC 17.63.060(B).

18 The third and most used path is the “special use permit” (“SUP”) path. *See* AMC  
19 17.63.070(A)(1). SUP applications are subject to layers of review under three chapters of  
20 the AMC. In addition to the process outlined in Chapter 17.63, SUP applications are  
21 subject to the City’s general zoning regulations in Chapter 17.64 and the procedures and  
22 requirements imposed by AMC 17.10.100. The AMC lists eight factors the City shall  
23 consider when deciding whether to grant a SUP application: (1) the height of the  
24 proposed tower, (2) the proximity of the tower to residential structures and district  
25 boundaries, (3) the nature of uses on adjacent and nearby properties, (4) the surrounding  
26 topography, (5) the surrounding tree coverage and foliage, (6) the design of the tower  
27 (with emphasis on features that reduce or eliminate visual obtrusiveness), (7) proposed  
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ingress and egress, and (8) the availability of alternatives not requiring a tower. AMC 17.63.070(B)(2).

A SUP applicant proposing to build a cell tower must provide the following information in the permit application:

- a. A scaled site plan clearly indicating the location, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), comprehensive plan classification of the site and all properties within the applicable separation distances set forth in Section 17.63.070(B)(5), adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower and any other structures, topography, parking, and other information deemed by the zoning administrator to be necessary to assess compliance with this chapter;
- b. Legal description of the parent tract and leased parcel (if applicable);
- c. The setback distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties;
- d. The separation distance from other towers described in the inventory of existing sites submitted pursuant to Section 17.63.040C shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known;
- e. A landscape plan showing specific landscape materials;
- f. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;
- g. A description of compliance with Sections 17.63.040C, D, E, F, G, J, L, and M, 17.63.070(B)(4), (5) and all applicable federal, state or local laws;
- h. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future users;
- i. Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the municipality;
- j. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

AMC 17.63.070(B)(1). Chapter 17.63 also specifies that the installation of antennas or towers in violation of the chapter is a criminal misdemeanor.

1 The permitting process requires the applicant to appear for a hearing before the  
 2 Planning Commission, and the commission then makes a recommendation to the City  
 3 Council. AMC 17.10.100(E)(5) and (6). The City Council shall deny an application  
 4 unless the applicant demonstrates, *inter alia*, that the proposed use “is designed in a  
 5 manner which is compatible with the character and appearance of the vicinity,” “is  
 6 designed in a manner that is compatible with the physical characteristics of the subject  
 7 property,” “is not in conflict with the health and safety of the community,” and “is in  
 8 compliance with the comprehensive plan.” AMC 17.10.100(B)(2)(a), (c), (e), (h).

9 After a community meeting was held to discuss the application, environmental-  
 10 impact review was conducted, and multiple hearings were held before the Planning  
 11 Commission and City Council, the City Council denied T-Mobile’s application. T-  
 12 Mobile sued the City, claiming that the AMC violates the federal Telecommunications  
 13 Act of 1996 (“the Act”) on its face, and that the City Council’s denial also violates the  
 14 Act as applied.

### 15 III. DISCUSSION

#### 16 A. Legal Standard on Summary Judgment.

17 Summary judgment is appropriate if “the pleadings, depositions, answers to  
 18 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
 19 is no genuine issue as to any material fact and that the moving party is entitled to  
 20 judgment as a matter of law.” Fed. R. Civ. P. 56(c).

#### 21 B. The AMC is preempted by Section 253(a) of the Act.

22 The purpose of the Act is to “provide for a pro-competitive, de-regulatory  
 23 national policy framework designed to accelerate rapidly private sector deployment of  
 24 advanced technologies and services . . . by opening all telecommunications markets open  
 25 to competition.” *Cox Commc’ns PCS, L.P. v. City of San Marcos*, 204 F. Supp. 2d  
 26 1260, 1264 (S.D. Cal. 2002) (quoting *Cellular Tel. Co. v. Oyster Bay*, 166 F.3d 490, 492-  
 27 93 (2d Cir. 1999)). The Act seeks to prevent state and local governments from prohibiting  
 28 the ability of any entity to provide telecommunications services: “No State or local statute

1 or regulation, or other State or local requirement, may prohibit or have the effect of  
2 prohibiting the ability of any entity to provide an interstate or intrastate  
3 telecommunications service.” 47 U.S.C. § 253(a). Section 253(a)’s preemptive language  
4 is “‘virtually absolute’ in restricting municipalities to a ‘very limited and proscribed role  
5 in the regulation of telecommunications.’” *Sprint Telephony PCS, L.P. v. County of San*  
6 *Diego*, 490 F.3d 700, 712 (9th Cir. 2007) (quoting *Qwest Commc’ns Corp. v. City of*  
7 *Berkeley*, 433 F.3d 1081, 1256 (N.D. Cal. 2001)).

8 Section 253(a)’s preemption applies not only to general prohibitions on  
9 telecommunications services, but courts have also held that a combination of certain  
10 conditions imposed by local ordinances amounts to a prohibition for purposes of Section  
11 253(a). The following features of a local ordinance have caused courts to find  
12 preemption: (1) an onerous permit application process, (2) a franchise requirement, (3)  
13 penalties for failure to comply with ordinance requirements, (4) subjective aesthetic  
14 design requirements, and (5) regulations granting unfettered discretion to the zoning  
15 authority to deny permits. *See Sprint*, 490 F.3d at 716; *City of Auburn v. Qwest Corp.*,  
16 260 F.3d 1160, 1175-76 (9th Cir. 2001); *Cox*, 204 F. Supp. 2d at 1265-66.

17 In this case, T-Mobile claims that the AMC is preempted because it (1) creates an  
18 onerous permit application process, (2) imposes criminal penalties for non-compliance,  
19 and (3) reserves unfettered discretion to the City Council to deny permit applications  
20 based on subjective and aesthetic factors. The City tacitly concedes the first two claims<sup>1</sup>,  
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24 <sup>1</sup>Although the City devotes a section of its brief to arguing that the AMC does not impose  
25 burdensome requirements, its arguments boil down to a contention that the AMC’s voluminous  
26 submission requirements are allowed under Section 332(c)(7). *See* Deft.’s Opp’n at 13-15. But  
27 this argument is not actually a dispute as to whether the requirements themselves are burdensome.  
28 It is true that some burdensome requirements may be necessary to protect the public safety and  
welfare, and thus exempted from preemption under Section 253(b), but that argument is based on  
an assumption that the requirements are burdensome. Therefore, the court views the City’s  
argument to be a tacit concession that the requirements are burdensome.

1 but focuses on T-Mobile's contention that the AMC grants the City Council unfettered  
2 discretion.

3 To support its claim of unfettered discretion, T-Mobile focuses on five sections of  
4 the AMC. Section 17.63.070(B)(2) sets out eight criteria for purposes of evaluating a  
5 cell-tower permit application. These criteria include the proximity of the tower to  
6 residential areas, the surrounding topography, and whether the tower has been designed  
7 to reduce or eliminate visual obtrusiveness. *See* AMC 17.63.070(B)(2)(a)-(h). AMC  
8 17.64.010(A) requires that the permit applicant demonstrate and explain "the need for the  
9 particular facility in the proposed location," and AMC 17.10.100(B)(1) requires that the  
10 applicant show that the use would not be "detrimental to the surrounding neighborhood  
11 . . . [and] will not be a liability to the neighboring uses." The AMC also directs the City  
12 Council to deny a permit application unless the applicant demonstrates, *inter alia*, that the  
13 design of the proposed use is compatible with the vicinity's character and appearance,  
14 and that the use does not hinder neighborhood circulation or discourage development.  
15 *See* AMC 17.10.100(B)(2)(a) & (b). Finally, the AMC authorizes the City Council to  
16 "impose conditions upon a particular use if it is deemed necessary for the protection of  
17 the surrounding properties and for the general welfare of the public and/or to provide for  
18 compliance with conditional use permit criteria." AMC 17.10.100(B)(3).

19 T-Mobile claims that because the AMC imposes the subjective criteria listed  
20 above, it is impossible for T-Mobile or any other applicant to know whether its  
21 application will be approved. According to T-Mobile, this is precisely the type of  
22 discretionary permitting process that the Act seeks to prevent. According to the City, the  
23 AMC validly protects legitimate concerns about a cell tower's effect on a community's  
24 aesthetic values and development potential as traditional zoning prerogatives of local  
25 governments. This argument anticipates the safe-harbor argument addressed in the next  
26 section of this order, in the sense that the City contends that even if a local government's  
27 zoning ordinances could be said to present barriers to wireless communication, they are  
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1 not preempted by the Act because creating zoning ordinances is a valid function of local  
2 government.

3 The City's argument has been unequivocally rejected in the Ninth Circuit. In  
4 *Sprint*, the court found that the Act preempted a county's wireless telecommunications  
5 ordinance ("WTO"):

6 The County's WTO, on its face, supplements the Zoning Ordinance by  
7 adding submission requirements to an already voluminous list. Those  
8 requirements are in addition to the open-ended discretion and threat of  
9 criminal penalties contained in the Zoning Ordinance. The WTO itself  
10 explicitly allows the decision maker to determine whether a facility is  
11 appropriately "camouflaged," "consistent with community character," and  
12 designed to have minimum "visual impact." We find the County's retort –  
13 that the elements of the WTO challenged by Spring are traditional facets of  
14 zoning that are unobjectionable for the simple reason that the WTO is a  
15 zoning ordinance rather than a franchise or public-right-of-way ordinance –  
16 unconvincing. . . . We conclude that the WTO imposes a permitting  
17 structure and design requirements that presents barriers to wireless  
18 telecommunications within the County, and is therefore preempted by  
19 Section 253(a).

20 *Sprint*, 490 F.3d at 716 (citations omitted). The county ordinance challenged in *Sprint*  
21 contains similar provisions to the AMC provisions challenged in this case. Both add  
22 voluminous submission requirements to a multi-layer permitting process, both contain  
23 criminal penalties for non-compliance, and both include subjective aesthetic and design  
24 requirements that vest significant discretion in the decision-making body. Due to the  
25 similarities between the regulations challenged in this case and those challenged in  
26 *Sprint*, the court applies *Sprint*'s reasoning to find that the challenged provisions of the  
27 AMC present barriers to wireless services and are therefore preempted by Section  
28 253(a).<sup>2</sup>

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24 <sup>2</sup>As *Sprint* also notes, the considerations under a Section 253(a) facial challenge and an as-  
25 applied challenge under Section 332(c)(7) of the Act are substantially similar. Both sections  
26 proscribe regulations that prohibit or have the effect of prohibiting wireless service. *See Sprint*,  
27 490 F.3d at 715. While challenges brought under the two different sections may face different  
28 procedural requirements, a court is asked under either section to consider whether a state or local  
government has prohibited or effectively prohibited wireless service. Thus, for the same reasons  
articulated in its analysis of T-Mobile's facial challenge to the AMC, the court would find T-  
Mobile's as-applied challenge successful. The court therefore need not analyze T-Mobile's as-



1 **C. The Section 253(b) safe harbor does not prevent preemption.**

2 The City argues that even if Section 253(a) preempts the AMC, the Section 253(b)  
3 safe harbor applies to prevent preemption. The Act contains safe harbors exempting  
4 certain types of regulations from preemption. Section 253(b) allows a state to “preserve  
5 and advance universal service, protect the public safety and welfare, ensure the continued  
6 quality of telecommunications services, and safeguard the rights of consumers.” Section  
7 253(c) allows states and local government to “manage the public rights-of-way.”

8 T-Mobile contends that the Section 253(b) safe harbor does not protect the AMC  
9 because Section 253(b) expressly applies only to states, not local governments. Few  
10 courts have considered this limitation, but those courts have noted that Section 253(b)  
11 only applies to local governments if the state has specifically delegated its authority to its  
12 local governments. *Cox*, 204 F.Supp.2d 1260, 1264 (S.D. Cal. 2002); *see also*  
13 *Southwestern Bell Wireless, Inc. v. Johnson County Bd. of County Comm’rs*, 199 F.3d  
14 1185, 1192 (10th Cir. 1999), *cert. denied*, 530 U.S. 1204 (2000).

15 The City acknowledges that the State has not specifically delegated authority to  
16 local governments to regulate telecommunications, but instead relies on the Washington  
17 Constitution’s general delegation of police powers to local governments. *See* WASH.  
18 CONST., art. XI, § 11; *see also Myhre v. City of Spokane*, 70 Wn.2d 207, 210 (1967)  
19 (“Zoning is a discretionary exercise of police power by a legislative authority.”). T-  
20 Mobile contends that a delegation of police power is too general to be considered a  
21 delegation for Section 253(b) purposes. T-Mobile also argues that even if the delegation  
22 was valid, Section 253(b) does not protect the AMC because the challenged sections are  
23 unrelated to public safety and welfare.

24 In *Cox*, a case both parties cite to support their position, the defendant wireless  
25 provider conceded that the state had delegated to its subdivisions the authority to

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28 applied challenge under Section 332(c)(7), and accordingly DENIES the City’s motion to strike  
(Dkt. # 30) certain evidence related to the Section 332(c)(7) claim.



1 regulating the time, place, and manner of installing public utilities. *Cox*, 204 F. Supp. 2d  
2 at 1268. This authority was limited to what was “necessary to safeguard the public,  
3 health, safety and welfare to the extent not prohibited by law.” *Id.* at 1269. Based on  
4 this concession, the court found that, for purposes of ruling on the preliminary injunction  
5 motion, Section 253(b) probably saved a city regulation directing the permitting authority  
6 to consider whether granting a variance would be materially detrimental to the public  
7 health, safety, or welfare. *Id.*

8       This case is distinguishable from *Cox* because in this case, the wireless provider  
9 contests delegation and the alleged delegation is very broad and general. And though *Cox*  
10 addressed the Section 253(b) and (c) safe harbors in the context of ruling on a motion for  
11 preliminary injunction, that court nonetheless unequivocally stated that Section 253(b)  
12 does not apply to local governments unless the state delegates the authority to regulate  
13 telecommunications services to municipalities. This conclusion is consistent with a  
14 comparison of the language of Section 253(b) (referring to state regulations) and Section  
15 253(c) (referring to state and local regulations). The City has not shown that the State  
16 intended to delegate its authority to regulate telecommunications to local governments; in  
17 fact, state laws indicate that the State intended to *prevent* such delegation. RCW  
18 35.99.040(2)(c) states that a city’s zoning authority over telecommunications providers is  
19 limited by Section 253, and RCW 35.99.040(1)(a) and (c) prohibit cities from regulating  
20 the services or business operations of telecommunications providers.

21       Even if the State had delegated its authority to the City, the challenged provisions  
22 of the AMC would not be saved by Section 253(b) because the City has not shown that  
23 they are necessary for the protection of public safety and welfare. Though the City  
24 claims that the challenged provisions protect the public welfare because they are based on  
25 traditional zoning concerns, such as aesthetics and property values, this interpretation of  
26 the Section 253(b) safe harbor threatens to swallow the preemption rule. If any zoning  
27 ordinance was protected merely by virtue of being a zoning ordinance, there would be no  
28 need for Section 253(a). The Ninth Circuit rejected this type of argument in *Auburn*.

1 In *Auburn*, city ordinances contained provisions requiring a telecommunications  
2 franchise applicant to describe its technical, financial, and legal ability to provide  
3 wireless services; provisions regulating transfer of shares of ownership in the  
4 telecommunications companies; provisions requiring the wireless provider to offer certain  
5 rates and terms to the communities served by the franchise; and provisions allowing the  
6 city council to impose conditions on a franchise as required by the public interest. *See*  
7 *Auburn*, 260 F.2d at 1178-79. Though the defendant cities claimed that the provisions  
8 were related to the cities' fitness to provide services, and thus related to the cities'  
9 protected interest in managing their rights-of-way under the Section 253(c) safe harbor,  
10 the court found that the cities' argument led to absurd results:

11 For example, [the cities] say stock ownership is linked to a company's  
12 financial well-being, which may affect its continued existence, or its ability  
13 to pay fees or other necessary costs, which may ultimately affect its use of  
14 the right-of-way. . . . This is simply too tenuous a connection to the  
15 "manage[ment] of rights of way." Under this semantic two-step, § 253(c)  
would have no limiting principle. The safe harbor provisions would  
swallow whole the broad congressional preemption. Municipalities could  
regulate nearly any aspect of the telecommunications business. Indeed,  
these regulations come perilously close to this *reductio ad absurdum*.

16 *Auburn*, 260 F.3d at 1180.

17 The court shares the same concerns in this case. The City's argument would  
18 justify the use of any regulation that could be tangentially tied to public safety and  
19 welfare, and the City essentially defines any zoning-related regulation as related to public  
20 safety and welfare. But this circular logic would lead to the result that no zoning-related  
21 regulation could ever be preempted under Section 253(a), and *Sprint* flatly rejects this  
22 contention:

23 We find the County's retort – that the elements of the [Wireless  
24 Telecommunications Ordinance] challenged by Sprint are traditional facets  
25 of zoning that are unobjectionable for the simple reason that the [ordinance]  
is a zoning ordinance rather than a franchise or public right-of-way  
ordinance – unconvincing.

26 *Sprint*, 490 F.3d at 716. In other words, just because regulations can be classified as  
27 zoning regulations does not mean that they cannot be preempted by Section 253(a). If the  
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1 regulations create a barrier to wireless telecommunications, Section 253(a) preemption  
2 applies.

3 *Sprint* does not address the Section 253(b) safe harbor, and the City urges this  
4 court not to view *Sprint*'s silence as support for T-Mobile's position that the Section  
5 253(b) safe harbor does not protect the challenged portions of the AMC from preemption.  
6 The fact that *Sprint* does not address Section 253(b) is not surprising, given that the  
7 district court order did not address it either. *See Sprint Telephony PCS, L.P. v. County of*  
8 *San Diego*, 377 F. Supp. 2d 886 (S.D. Cal. 2005). When *Sprint* and *Auburn* are read  
9 together, in light of the purpose of the Act, the court concludes that the Act's safe harbors  
10 have a more limited applicability than the City will admit. The purpose of the Act is to  
11 create federal regulation of wireless service, and to preempt state and local regulations  
12 that violate those federal regulations. State and local government regulations that prohibit  
13 or present barriers to wireless services are generally preempted, though certain narrow  
14 functions of those governments are exempted. If, as the City contends, zoning ordinances  
15 constituting a barrier to wireless service are considered, by definition, to be an exempted  
16 function of local government, zoning ordinances would never be preempted. But *Sprint*  
17 rejects this precise argument. And although the City appears to argue that the court  
18 should look to Section 332(c)(7) as a basis for finding that the City's zoning authority is  
19 not preempted, Section 332(c)(7) is not a third safe harbor from preemption. Instead,  
20 Section 332(c)(7) places restrictions on the local government's decisions regarding the  
21 placement, construction, and modification of personal wireless service facilities.  
22 Although it does reveal Congress' recognition that there are legitimate state and local  
23 concerns related to wireless communications, Section 332(c)(7) is not a safe harbor  
24 protecting all local zoning regulations from preemption. *See Sprint*, 490 F.3d at 714  
25 (concluding that if Congress had been concerned that Section 253(a) would preempt the  
26 regulations protected by Section 332(c)(7), it would have created a safe harbor for those  
27 regulations).

1 Therefore, the court finds that Section 253(b) does not save the challenged  
2 portions of the AMC. Because these portions impose an onerous permitting structure and  
3 grant considerable discretion to the permitting authority, the court finds that Chapter  
4 17.63, Chapter 17.64, and Section 17.10.100 of the AMC present barriers to wireless  
5 telecommunications in the City and are therefore preempted by Section 253(a). Though  
6 the court has considered the other arguments raised in the parties' briefing, including  
7 those related to T-Mobile's Section 332(c)(7) challenge, the court need not address those  
8 arguments given the court's resolution of the Section 253(a) preemption issue.

9 **D. The challenged portions of the AMC cannot be severed from the valid**  
10 **portions.**

11 In the City's briefing, it contended that the challenged portions of the AMC could  
12 be severed if the court found them to be preempted. *See* Deft.'s Opp'n at 20-21. At oral  
13 argument, however, the parties agreed that severing the challenged portions of the AMC  
14 would eviscerate the permitting scheme, leaving a disjointed and unworkable code.

15 T-Mobile requests that, rather than remand the permit application for further  
16 consideration by the City as the City requests, the court simply order that the City  
17 approve the permit application. The court has considered following an approach taken by  
18 *Berkeley*, wherein the City would be given an opportunity to show cause under the  
19 AMC's non-exempted portions or other valid regulations why the court should not order  
20 that the permit application be granted. *See Berkeley*, 146 F. Supp. 2d at 1105 (where a  
21 city's permitting ordinance was exempted under Section 253(a), but where the wireless  
22 provider's application raised concerns regarding excavation and encroachment issues, the  
23 court allowed the defendant to show cause why a permit approval should not be ordered).

24 In *Berkeley*, there were many disputes of material fact related to the environmental  
25 impact of the wireless provider's proposed use, such that the court was hesitant to order  
26 that the permit be granted without further consideration of the significant potential  
27 consequences. In this case, the administrative record shows that T-Mobile has complied  
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1 with all submission requirements under the AMC, and no issues of material fact are in  
2 dispute. Therefore, the court will provide T-Mobile with its requested relief.


3 **IV. CONCLUSION**

4 For the foregoing reasons, the court GRANTS T-Mobile's motion for summary  
5 judgment (Dkt. # 12), DENIES the City's motion for summary judgment (Dkt. # 27), and  
6 DENIES the City's motion to strike (Dkt. # 30).

7 IT IS HEREBY ORDERED as follows:

- 8 (1) The City is enjoined from enforcing on T-Mobile Chapter 17.63, Chapter  
9 17.64, and Section 17.10.100 of the AMC, as they relate to wireless  
10 telecommunications facilities; and  
11 (2) The City must issue a permit allowing T-Mobile to construct the wireless  
12 communications facility as proposed in its application.

13 Dated this 6<sup>th</sup> day of May, 2008.

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16 The Honorable Richard A. Jones  
17 United States District Judge  
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